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zone Makindye Division on land formerly comprised in FRV 57 Folio 14 Kibuga Block 15 plot 1795 be dispensed with;

5 **c. The applicants be permitted to proceed and sale a portion of the kibanja measuring approximately 30 decimals forming part of their kibanja without the consent of the respondent;**

10 **d. IN THE ALTERNATIVE, the respondent as the registered owner of the land be directed to immediately issue the applicants the requisite consent to allow the applicants sale part of the kibanja measuring approximately 30 decimals.;**

e. Costs of the application be met by the respondents.

15 **Grounds of the application.**

The grounds upon which this application is premised are contained in the affidavit in support thereof deponed by the 1st applicant, **Ms. Namirembe Jennifer**. She stated *inter alia* that she is the daughter and administrator of the late Kirungimazzi Anne Marie who was a tenant by occupancy on the respondent's land at Kabalagala Central Zone Makindye Division and that her occupation was at all times recognized by the respondent.

25 That when the applicants' mother passed on sometime in 2003, they continued to be in occupation of the same and that during the management and distribution of the deceased's estate, it was agreed that a portion of the kibanja measuring approximately 30 decimals be sold off, and the process of giving the respondent who is the mailo owner of the land the 1st option to purchase was initiated, while the respondent's consent to sell the kibanja was also sought in the event that they were not interested in purchasing the reversion.

30 That on 6th August 2019, the applicants made a formal notice/application which was neglected by the respondent who refused to respond inspite of the fact that the applicants continued to beseech her to perform its statutory



obligation in observance of their rights over the property and that on 7th July 2023, the applicants wrote to the respondent offering it the 1st option to purchase a portion of the tenancy in issue but the respondent declined to respond to the same.

- 5 That on 17th January 2024, the applicants again reminded the respondent of the offer, and also requested them to give the applicants their consent to sale to any willing buyer but the respondent has to date neglected the same and yet the deponent herein is not only unemployed, but also frail, elderly and also suffers from diabetes type 2 which requires treatment which requires
10 money and that the only way she can get the money is if the applicants sell of the portion of the *kibanja*.

The applicants also filed a supplementary affidavit in reply deposed by **Mr. Nsubuga Tony**, the 2nd respondent herein. He stated that he is a beneficiary of the estate of the late Kirungi Anne Marie who was a recognized tenant by
15 occupancy on the respondent's land at Makindye Central Zone and that the beneficiaries of the deceased's estate all agreed to sell a portion of the land and wrote several notices and requests to the respondent regarding the same.

That the applicants have used all lawful and amicable avenues to obtain the requisite consent to sale but the respondent has disregarded all their requests
20 and that while the 2nd applicant suffers from diabetes type 1, he requires specialized treatment and that his only hope of getting the urgently needed treatment is by selling off the 30 decimals to get the money lest he risks losing his life.

That this court is clothed with inherent power to not only hear this application
25 but also grant the prayers sought and stop the injustice being committed by the respondent.

Respondent's reply.

The respondent opposed the application through an affidavit in reply deposed by **Mr. Denis Lutete**, its lawful attorney who stated *inter alia* that the
30 allegations set out in the applicants' affidavits in support are not true, and that while the late Kirungimazzi Anne Marie was a *kibanja* holder on part of

the land situate in **Block 15 plot 1795 at Nsambya**, the respondent has at all times owned and held the freehold tenure over the land, but there are other persons holding various interests on the suit land including a one Dharam Data of **m/s Africa Academy** who with the respondent's approval purchased a leasehold interest from **m/s Ramraj Limited** in 2002, and currently operates a school thereon.

That part of the land claimed by the applicants falls in land comprised in **Kibuga Block 15 plot 1795 FRV 57 Folio 14 volume 2557 land at Nsambya** measuring approximately 4.155 hectares with a running lease of 99 years which commenced on 1st December 1999 thus the lawful lessee of the entire land is **m/s Africa Academy limited** who according to the respondent's records is compliant with all the lease obligations while the respondent is the lessor and as such, the piece of land claimed by the applicants and for which they seek consent to sale is within the certificate of title held by **m/s Africa Academy Limited**.

That the respondent in their earlier response to the applicants pointed out the fact that the applicants had illegally sold part of the land contrary to the law, and without the consent of the respondent or that of **m/s Africa Academy Limited** but no response was made to the same and that the applicants have also attempted to illegally sell as they are soliciting and receiving offers from buyers.

That although the applicants have on several occasions tried to reach out to the respondents, the respondent advised the applicants to negotiate and deal with **m/s Africa Academy Limited** regarding their intentions but the applicants have ignored the same and that contrary to the applicants' allegations that the respondent did not reply to their request dated 6th August 2019, the respondent responded to the same through their lawful attorney, **m/s Nyanzi Kboneka & Mbabazi Advocates** in a letter wherein they noted the discrepancies and disputes regarding the size of the *kibanja* and requested further documentation so as to ascertain the actual size of the land but none was availed.

That the respondent who offered mediate the matter advised the applicants to settle the matter with Mr. Dharam Datta of **m/s Africa Academy limited** which advice the applicants did not heed to thus the respondent's actions of not granting consent to the transaction are not only legal but also legitimate and that the applicants already have a purchaser who by letter dated 19th January 2024 offered to purchase the *kibanja* in issue at **Ug. Shs. 300,000,000/= (Uganda Shillings three hundred million only)** yet the respondent who is the landlord was never involved in the process.

That the valuation of the suit *kibanja* which is very questionable is above the prevailing market value thus and that the respondent who is aware of the existing legal interest of **m/s Africa Academy Limited** cannot be seen to impeach the interests of either party since the applicants could have easily engaged **Mr. Dharama Datta** so as to settle the issue amicably but they deliberately bypassed the lessee so as to cheat both **m/s Africa Academy Limited** as well as the respondent of their legal interests, and create dispute among the parties.

That the respondent upon consenting to the lease interest to **m/s Africa Academy Limited** only retained a reversionary interest in the land and that the applicants are only using medical grounds to gain sympathy from this court and that the medical documents presented by the applicants are fraudulently obtained and need to be thoroughly scrutinized and verified.

That the payment receipts for survey, stamp duty and title does not necessarily imply that the respondent has to grant consent because the applicants had already illegally sold part of the *kibanja* and were planning to do the same illegally, and yet the legal interest held by **m/s Africa Academy Limited** is above the applicants' interest thus this application lacks merit, and the applicants have intentionally failed to utilize the readily available remedies to address their impasse.

That the applicants' inaction and fraud should not be vested on the respondent and that the whole application should be rejected with costs.

The respondents also filed a supplementary affidavit in reply deposed by **Mr. Dharama Datta**, the director of **m/s Africa Academy Limited**. He stated that the procedure adopted by the applicants is not only defective and inappropriate, but is also meant to mislead this court into making unjust pronouncements that would impeach and infringe on my constitutional rights to own property because **m/s Africa Academy Limited** acquired a leasehold interest on land comprised in **Block 15 plot 1795 land at Nsambya** from Ramraj Limited which was never contested by the respondent.

That while the lessee has continuously operated a school on the land, the applicants have always been aware of the deponent's interest and have never challenged the same thus there are 2 competing interest and that this court should not grant the orders sought without hearing the lessee's story because the application is in its very nature highly contentious and would require the parties to adduce evidence by way of witness statements and this matter ought to have been commenced by plaint.

That because the respondent's interest in the portion of land leased is only reversionary, it cannot pass further interest therein without involving the lessee and that granting this application would result in losing a portion of the leased land seeing that the boundaries of the suit *kibanja* are in contention.

In addition, that court would not grant an application of this nature where it has been brought to court's attention that there are legal interests affected by an equitable interest holder without giving all parties the right to be heard and that because the lessee is the landlord, the respondent only holds a reversionary interest in the land thus this application ought to be dismissed with costs.

Applicants' rejoinder.



The applicants also filed an affidavit in rejoinder to the averments set out in the affidavit in reply. The 1st applicant stated inter alia that the affidavits filed by the respondent are riddled with falsehoods, malice, and baseless allegations intended to hoodwink this court so as to defeat justice and that
5 because both affidavits were filed out of time, the same are irregularly on court record and ought to be struck out.

That the agreements of sale attached to the affidavit in reply are forgeries because the 1st applicant has never entered into any agreement in regard to the *kibanja* and that the beneficiaries are still in possession thereof and the
10 said Ikiriza Moses has never entered on the land as alleged by the respondent.

That because the respondent is mandated under the Constitution and Land Act to offer the applicants the consent sought which mandate cannot be changed by a private contract with the lessee because the respondent is the landlord and that the agreement to lease the land without giving the
15 applicants the 1st option to purchase the land was illegal thus the respondent cannot present a claim to court based on illegalities, and Mr. Dharam Datta cannot seek to rubber stamp his illegal acquisition of the leasehold interest which injures the applicants' rights/interests.

Additionally, that the respondent remains duty bound to grant the consent
20 sought because a lessee cannot grant consent to a person that enjoys an interest in perpetuity and that while the unconstitutional actions of the respondent and Mr. Dharam Datta interfere with the applicants' enjoyment of their constitutionally guaranteed rights and interest, the lease is a nullity, and that the boundaries of the suit *kibanja* are well known.

25 That the applicants responded to all the queries raised by the respondent in 2019 in a letter dated 11th November 2019 but the respondent has since denied to avail the applicants the consent sought and is now staging Mr. Dharam Datta so as to continue infringing on the applicants' constitutional rights considering the fact that the lease cannot be the basis of interfering
30 with the quiet enjoyment guaranteed by the constitution.

That because the law states that the sale shall be on a willing buyer willing seller basis, the issues of value are not only misplaced but also irrelevant and that the statutory time within which the respondent ought to have responded had lapsed thus this application.

5 **Representation by court.**

The applicants were represented by ***m/s Richard Kabazzi & Partners Advocates*** while the respondent was represented by ***m/s LMN Advocates***. Both counsel filed written submissions as directed by this court.

Determination by court.

10 I have carefully perused the evidence, and read the submissions of both counsel, the details of which are on court record, and which I have taken into account in determining whether this application discloses sufficient cause warranting the grant of the prayers sought.

15 It is not in dispute that the applicants are in occupation of a portion of the land belonging to the respondent and that the late Kirungimazzi Anne Marie had a kibanja thereon. The evidence on record reveals that the deceased made payment of ground rent as early as 25th November 1991.

It is also not in dispute that there is a lease on the land in the names of ***m/s Africa Academy Limited***. This lease was however first issued to in December
20 1999.

It is trite law that a prior equitable interest in land can only be defeated by a bonafide purchaser for value without prior notice. (***See: Hanbury and Martin Modern Equity (Sweet and Maxwell) Ltd 1977***),

25 In light of the above, the said ***m/s Africa Academy Limited*** having acquired the land after the late Anne Marie cannot claim to be landlords as the lease from which they claim legal interest was created long after the applicants' late mother had already acquired an equitable interest in the land and as such, that interest is superior to the leasehold interest held by the lessee.

As such, the right landlord from whom consent ought to be sought is the respondent who even received some benefit from the tenancy when the deceased paid ground rent.

5 The respondent cannot therefore turn around to claim that it is not the lawful land lord and yet it derived benefit in its capacity as landlord when it acknowledged receipt of the ground rent.

Whereas court cannot ignore the other vested interests on the suit land more fundamental is the lack of certainty on the size of the *kibanja* itself. This is an issue which court cannot ignore, more so because the respondent present to
10 court a sale agreement between some applicants and one Moses Irikiza. The agreement is dated 30th October, 2005 for land measuring 72 ft x 77 ft.

I have also had occasion to read through the correspondences in 2019 between the same parties concerning the applicants' intention to dispose of the *kibanja* and the reasons advanced as to why the respondent could not
15 give its consent at that time. The respondent in its response to the request from the applicants even made it clear that it was ready to have the matter mediated upon.

Whatever reason the applicants may have to dispose of the *kibanja*, it is only prudent for court and for parties to this application to first ascertain and/or
20 agree the actual area of the *kibanja* and verify the correctness of the assertion that part of it had already been disposed of to a third party.

It is only until those issues are agreed upon that the parties can fairly enter into a consent to assign the remaining portion of the *kibanja*, if any. I am inclined to disagree therefore that the consent was not unreasonably denied
25 by the respondent under those circumstances.

Accordingly, the following orders are made:

- 1. The parties are directed to undertake a joint independent survey report to ascertain the exact size of the *kibanja* and present it for court assisted mediation.**



2. *The mediation shall involve the lessee on that land who was not party to this application; and shall also bear in mind both the fact that the applicants had acquired an earlier equitable interest in the land and that the lessee and the respondent have vested interests in the suit land, which cannot be ignored.*

3. *In the event of any failure to settle within a period of 45 days before the court assisted mediation, the matter shall proceed in a formal trial.*

No orders as to costs.

I so order.


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Alexandra Nkonge Rugadya

Judge

8th April 2024

Delivered via email



8/4/2024